Remarks/Arguments

Claims 18-35, 47, and 48 are pending in the application. Claims 18, 22, 30, 33, and 47 are in independent form. Claims 1-13 were previously cancelled. Claims 14-17 and 36-46 were previously withdrawn from consideration.

Claim Rejections Under 35 U.S.C. 102(e)

Claims 18-35 and 47-48 stand rejected under 35 U.S.C. 102(e) as being anticipated by Bezos et al. (U.S. App. Pub. No. 2002/0152163. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631 (Fed. Cir. 1987). Applicants submit that the reference cited by the Examiner do not set forth, either expressly or inherently, all of the elements of the rejected claims.

Claims 18, 22, 30, 33, and 47

Among other limitations, claim 18 requires "causing a liquidity source that is not the same entity as the third party biller to electronically transfer funds corresponding to the transaction amount from the liquidity source to the merchant via communication across a computer network, the liquidity source being repaid by the third party biller by way of the electronic transfer of at least a portion of the funds received by the third party biller from the payor." (emphasis added.) Independent claims 22, 30, 33, and 47 all contain this same limitation is slightly different language.

Bezos does not teach this limitation at all. Bezos merely teaches a "network-based payment service for facilitating online, user-to-user payments." Bezos, Abstract, ll. 1-2. The

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actual transaction process taught by Bezos is illustrated by FIG. 3 and described at p. 7, ¶¶ 0099-0106. As the reference makes clear, in the transaction type described by Bezos, there are 4 distinct entities[1], the payer, the network service, the credit card company, and the "pay page owner." Assuming for the moment that the "pay page owner" would be equivalent to the merchant in the rejected claims, the relationships between the four entities in Bezos are not the same as those required by the rejected claims.

According to the Examiner, the credit card company in Bezos is the liquidity source and the network service (described as Amazon.com by the Examiner) is the third party biller of the rejected claims. Applicants first note that the Specification in the present Application makes it clear that the term "liquidity source" cannot include credit card companies. While Applicants recognize that during patent examination, pending claims must be given their broadest reasonable interpretation <u>consistent with the specification</u>, the Examiner's interpretation could not be more inconsistent with Applicants' Specification.

For example, Applicants' Specification expressly provides:

"By way of example, many institutions of higher education, such as colleges and universities, allow students to pay for college expenses, including tuition, by credit card. <u>Unlike the institutions, the credit card companies</u>, which assume the risk of non-payment, have a robust billing and collection mechanism. While providing immediate cash to the university, the fees associated with the credit cards are a burden on the schools, most of which are non-profit institutions who would prefer to spend their limited resources on education rather than bank fees.

"An object of the invention is to provide an <u>alternative system for processing payments</u> that is convenient for payors, provides liquidity to merchants, and is potentially less expensive to merchants than the various credit card systems now available.

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[1] The reference also discusses a fifth entity, an associate that is paid a referral fee or bounty. However, such an associate is immaterial to the rejected claims.

"The present invention comprises a system in which one or more
independent sources of liquidity provides funds to merchants involved in
transactions, each source of liquidity being repaid by a third party biller that
collects the funds from a payor in the transaction."

Specification, ¶¶ 1003-1005. The Specification also states "Unlike a credit card company, in

which the same company provides the liquidity to the merchant and bills the payor, the third

party biller in a preferred embodiment of the invention is typically a different entity from the

liquidity source, that is, the entity that provides money to the merchant. Specification, ¶ 1012.

Further, according to the description, "An amount corresponding to the transaction amount,

typically the transaction amount less a service fee, would then move in step 164 from the

liquidity source 112 to the merchant 106, thereby providing liquidity substantially equivalent to

that which would have been available to the merchant 106 had the transaction occurred via a

credit card network." Specification, ¶ 1014.

The MPEP expressly provides that the "broadest reasonable interpretation of the claims

must also be consistent with the interpretation that those skilled in the art would reach."

§ 2111; see also In re Cortright, 165 F.3d 1353, 1359, 49 USPQ2d 1464, 1468 (Fed. Cir. 1999).

It is clear from Applicants' Specification that the whole object of the disclosed invention is to

provide an alternative system to credit card payments. No person of ordinary skill in the art

would understand Applicants' Specification to teach a credit card company as a "liquidity

source."

Note that Applicants are not attempting to read additional limitations of the

specification into the claims. The claim expressly requires causing a liquidity source to

transfer funds to a merchant. Applicants are not attempting to add an additional limitation.

However, when the meaning of the term "liquidity source" is considered in light of Applicants'

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disclosure, it is clear that applying the term to a credit card company would not be at all consistent with the written description in Applicants' Specification.

Further, even if the Examiner's interpretation is correct, Bezos still fails to teach the limitations of the rejected claims. Applicants' claim 18 requires that the third party biller "bill the payor" and that there be "funds received by the third party biller from the payor." In the transaction described by Bezos, however, the credit card company, not Amazon.com, would be the entity that actually bills and receives payment from the payor. Thus, the credit card company would have to also be the third party biller under the Examiner's interpretation, but the rejected claims expressly specify that the "liquidity source" and the third party biller are "not the same entity." Bezos simply does not teach the limitations found in the rejected claims, even if the claim term "liquidity source" could be interpreted to include the credit card company.

Although not argued by the Examiner, Bezos also fails to teach the limitation if the credit card company is considered to be the third party biller and Amazon.com is considered to be the "liquidity source." Applicants first note that interpreting the claim term "third party biller" to include a credit card company would not be a reasonable interpretation in light of Applicants' Specification for the same reasons discussed above. Further, the rejected claims require causing the liquidity source to transfer funds to the merchant and that the liquidity source then is repaid by the third party biller from funds received from the payor. This is not at all the sequence taught by Bezos.

As shown in Bezos FIG. 3, once the user initiates payment, the user's credit card information is obtained and the credit card transaction is executed. Once that happens, the account of the network service would receive a credit from the credit card company. Only then

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would the account of the pay page owner (merchant be credited). The reference says nothing at all about any electronic transfer of funds corresponding to a transaction amount. But even if an account credit is considered to be an electronic transfer of funds, the network service does not act as a "liquidity source" as taught by Bezos. Instead, the funds do not get credited to the merchant until after the credit card transaction has been executed. The only entity in Bezos that functions as a liquidity source (by initially providing funds and then being repaid from funds received from payor) is the credit card company. But as with the Examiner's original interpretation of the reference, that means that the credit card company is acting as both the third party payor and the liquidity source, and that is directly contrary to the limitations in the rejected claims.

Dependent claims

Applicants note that the Examiner has failed to provide any reasons at all for the rejection of dependent claims 19-21, 23-29, 31-32, 34-35, or 48. Each of these claims contains additional limitations not found in the parent claims. The Examiner completely fails to address these claims or the additional limitations. For example, in addition to the limitations of independent claim 22, dependent claim 25 requires the limitation of receiving funds corresponding to the transaction amount from "a mutual fund"; and dependent claim 26 requires the limitation of receiving funds corresponding to the transaction amount from "a pooled fund in which the merchant has invested." Further, in addition to the limitations of claim 22, dependent claim 28 requires the limitation that the transaction amount be charged to "a billing account at a utility company, a department store, or an oil or gasoline company"; and claim 29 requires the transaction amount be charged to "a billing account at a cellular

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telephone provider." Bezos does not teach any of these limitations, and the Examiner has failed to specifically address these claims or the additional limitations in any fashion whatsoever. Further, the Examiner has also failed to provide any reasons why those limitations would be obvious.

Remaining Claims

Applicants submit that the remaining claims, being dependent from claims that are allowable for reasons stated above, are also allowable. Accordingly, Applicants request that the objections to these remaining claims also be withdrawn.
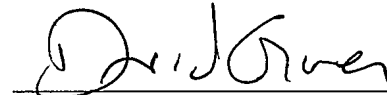
Conclusion

It is believed that all of the pending issues have been addressed. However, the absence of a reply to a specific objection, issue, or comment does not signify agreement with or concession of the rejection, issue, or comment. In addition, because the arguments made above may not be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this reply should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this reply, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Applicants submit that all claims in the application are now in condition for allowance,

and Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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